



UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JAMES H. ALLEMAN

Application 08/798,115
Filed February 12, 1997

MOTION FOR JUDGMENT

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JAN 22 1999

Group 2700

2742 ORIGINAL

Bd of Appeal
K. Ward
4/1/99
#328
R. H. Smith

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AND INTERFERENCES

This application was finally rejected on December 30, 1997. A Notice of Appeal was timely filed on June 26, 1998. A Brief on Appeal was filed August 26, 1998.

Under the provisions of M.P.E.P. 1208, "The examiner should furnish the appellant with a written statement in answer to the appellant's brief within 2 months after the receipt of the brief by the examiner." That means that the Examiner's Answer was due at the end of October. It has now been almost three months since the Examiner's answer was due (five months since the appeal brief was filed), and no Examiner's Answer has been sent to appellant. A Petition to Make Special was filed in this case on March 13, 1997, and it was granted. There have been numerous delays since then.

A judgment in favor of appellant should be entered by default, and the

case should be passed to issue as if there has been a withdrawal of the final rejection under M.P.E.P. 1208.2. A proposed form of judgment is attached.

Dated: Jan 13 1995

Respectfully submitted,

BRYAN, HINSHAW & BARNET
A Professional Corporation

By 

John P. Sutton
Registration No. 22,460
Attorneys for Appellant
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San Francisco, CA 94104
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ORIGINAL

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This matter having come on for appellant's motion for judgment, and the file revealing that a Petition to Make Special has been granted, a Final Rejection entered on December 30, 1997, a Notice of Appeal filed June 26, 1998, and an appeal brief filed August 26, 1998, and no Examiner's Answer has been filed,

IT IS HEREBY ORDERED AND ADJUDGED that the Examiner is reversed by default for failure to file a timely response to the appeal brief. The case shall be passed to issue under M.P.E.P. 1208.2, the Final Rejection having been deemed withdrawn.

Dated: _____

Lee E. Barett
Administrative Patent Judge

Jameson Lee
Administrative Patent Judge

James T. Carmichael
Administrative Patent Judge

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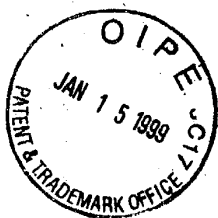
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